

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated March 18, 2009 (hereinafter Office Action) have been considered. Claims 62-119 remain pending in the application. Claims 75 and 103 are being amended for better consistency with their respective base claims. Independent claims 62, 89, and 118 are being amended for reasons explained below. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicants wish to thank Examiner Alyssa Alter for the courtesy of a telephonic interview which took place on May 20, 2009, and in which the undersigned attorney Stephen Jensen participated on behalf of Applicants. Prior to the interview, the undersigned provided the above claim amendments to the Examiner for her consideration. During the interview, the Examiner indicated that the amendments to the independent claims, wherein “at least partially non-overlapping with” is replaced with “being different than”, were acceptable and overcame the indefinite rejections in the Office Action.

In connection with the anticipation rejections in the Office Action, the undersigned then directed the Examiner’s attention to the “in response to … triggering sensing …” feature of claim 62. This claim feature uses the “in response to” and “triggering” language to establish a causal relationship between the “detecting the first cardiac signal peak within the first capture detection region” and the “sensing for a second cardiac peak within a second capture detection region”. This claim feature appears to be addressed in the portion of the Office Action bridging pages 3-4, where it states that “[i]n the event that the capture of the first ventricle is sensed, then the system [of U.S. Patent Application Publication US 2001/0049542 (Florio)] searches for the capture of the second ventricle”. However, no citation to any portion of the asserted Florio reference is given in support of this proposition, and the undersigned was unable to find such teaching in Florio. Instead, in FIG. 6 and paragraph 112 of Florio, for example, Florio seems to simply sense in a sampling window 190 and then count the number of negative peaks within that window.

In discussing this matter, the Examiner appeared to develop a better appreciation of the “in response to … triggering sensing …” feature of claim 62. And, after some review of

Florio during the teleconference, the Examiner was not able to readily identify where Florio taught this claim feature, although she indicated that she planned to review the reference again more thoroughly upon receipt of Applicants' response to the Office Action.

The Office Action rejected claims 62-119 under 35 U.S.C. §112, second paragraph, as being indefinite. In response, Applicants submit that the amendments to independent claims 62, 89, and 118 overcome the indefiniteness rejection in accordance with the Examiner's position in the interview. Withdrawal of the rejection under 35 U.S.C. §112, second paragraph, is respectfully requested.

The Office Action rejected claims 62, 64, 66-73, 84-89, 91-105, and 112-118 under 35 U.S.C. §102(b) as being anticipated by Florio. In response, Applicants reiterate the point made during the interview and explained above, that the "in response to ... triggering sensing ..." feature of claim 62 cannot be found in Florio. Similar language appears in the other independent claims 89 and 118. Since Florio does not satisfy the "all elements" test relative to each of the independent claims, it cannot anticipate those claims, nor their respective dependent claims. Withdrawal of the rejection of claims 62, 64, 66-73, 84-89, 91-105, and 112-118 under 35 U.S.C. §102(b) is respectfully requested.

The Office Action rejected claim 65 under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, based on 35 U.S.C. §103(a) as obvious over Florio. Applicants respectfully submit that the deficiencies of Florio mentioned above render this rejection unsustainable. Withdrawal of the rejection is respectfully requested.

The Office Action rejected claims 63, 90, and 119 under 35 U.S.C. §103(a) as being unpatentable over Florio. Applicants respectfully submit that the deficiencies of Florio mentioned above render these rejections unsustainable. Withdrawal of the rejections is respectfully requested.

To the extent Applicants have not responded to any characterization by the Examiner of the asserted art or of Applicants' claimed subject matter, or to any application by the Examiner of the asserted art to any claimed subject matter, Applicants wish to make

clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Examiner's characterizations, or any other assertions or statements beyond that provided above is unnecessary. Applicants reserve the right to address in detail any such assertions or statements in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.142PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC
8009 34th Avenue South, Suite 125
Minneapolis, MN 55425
952.854.2700

Date: June 9, 2009

By: /Stephen C. Jensen/

Stephen C. Jensen
Reg. No. 35,207